

# CALLISTER NEBEKER & McCULLOUGH

A PROFESSIONAL CORPORATION  
ATTORNEYS AT LAW  
GATEWAY TOWER EAST SUITE 900  
10 EAST SOUTH TEMPLE  
SALT LAKE CITY, UTAH 84133  
TELEPHONE 801-530-7300  
FAX 801-364-9127

OF COUNSEL  
LUCY KNIGHT ANDRE  
T. RICHARD DAVIS  
EARL P. STATEN

LOUIS H. CALLISTER, SR.  
(1904-1983)  
FRED L. FINLINSON  
(1906-1995)  
RICHARD H. NEBEKER  
(1924-1998)

TO CALL WRITER DIRECT  
(801) 530-7428  
brianburnett@cnmlaw.com

July 17, 2001

LOUIS H. CALLISTER  
GARY R. HOWE  
L.S. McCULLOUGH, JR.  
FRED W. FINLINSON  
DOROTHY C. PLESHE  
JEFFREY N. CLAYTON  
JAMES R. HOLBROOK  
W. WALDAN LLOYD  
JEFFREY L. SHIELDS  
RICHARD T. BEARD  
STEVEN E. TYLER  
CRAIG F. McCULLOUGH  
GEORGE R. SUTTON  
RANDALL D BENSON  
GEORGE E. HARRIS, JR.<sup>1</sup>  
PAUL H. SHAPHREN  
DAMON E. COOMBS  
CYNTHIA J. CRASS  
BRIAN W. BURNETT

CASS C. BUTLER  
LYNDA COOK  
JOHN H. REES  
MARK L. CALLISTER<sup>2</sup>  
MARTIN R. DENNEY  
JAN M. BERGESON  
LAURIE S. HART  
WILLIAM H. CHRISTENSEN  
GLEN F. STRONG<sup>3</sup>  
JAMES D. GILSON<sup>4</sup>  
CRAIG T. JACOBSEN  
JOHN B. LINDSAY  
DOUGLAS K. CUMMINGS  
ZACHARY T. SHIELDS  
JEANENE F. PATTERSON<sup>5</sup>  
DAVID R. YORK  
LEE S. McCULLOUGH, III  
JENNIFER WARD  
LEONARD J. CARSON

<sup>1</sup> ALSO MEMBER MISSOURI BAR

<sup>2</sup> ALSO MEMBER CALIFORNIA BAR

<sup>3</sup> ALSO MEMBER ILLINOIS BAR

<sup>4</sup> ALSO MEMBER COLORADO AND WASHINGTON D.C. BARS

<sup>5</sup> ALSO MEMBER NEW YORK AND DELAWARE BARS

## HAND DELIVERED

Kurt E. Seel  
Utah Attorney General's Office  
160 East 300 South, 5<sup>th</sup> Floor  
Salt Lake City, UT 84114

Pam Grubaugh-Littig  
Division of Oil Gas & Mining  
1594 West North Temple, Suite 1210  
P.O. Box 145801  
Salt Lake City, UT 84114-5801

Re: Sunnyside Cogeneration Associates - Water Development

Dear Kurt and Pam:

As we have discussed, Sunnyside Cogeneration Associates ("SCA") owns Water Right No. 91-231 and is in the process of developing that right. SCA has entered into an Agreement for Property Access ("Agreement") with East Carbon City and Sunnyside City to access property they own on which the Manshaft into the Sunnyside mine is located.

The Manshaft has been sealed and the property reclaimed. SCA's proposal is to uncover the Manshaft opening, drill through the concrete caps and see if water has flooded the mine. If water is present in the Manshaft, SCA plans to pump water from this location. If water is not present, SCA will seal the Manshaft and reclaim the area.

The Agreement requires that SCA provide the cities with written evidence of the approval of all agencies having jurisdiction over the reclamation site including the Utah Division of Oil, Gas & Mining

Kurt E. Seel  
Pam Grubaugh-Littig  
July 17, 2001  
Page 2

("DOGM"). See Section C. Accordingly, I am asking for DOGM to send me a letter stating that SCA may proceed forward with the project as set forward in the Agreement. Please let me know if there is any additional information you need in order to send me a letter regarding this issue. SCA is placing \$25,000 in escrow with the cities to ensure that reclamation occurs if the property is not developed. See Section B.

Thank you for your cooperation in this regard. If you have any questions, please feel free to contact me.

Sincerely,

CALLISTER NEBEKER & MCCULLOUGH

A handwritten signature in black ink, appearing to read "Brian W. Burnett", with a long horizontal flourish extending to the right.

Brian W. Burnett

BWB:ias  
Enclosure

cc: Jim Willey  
Dan Skowronski  
Rob McLeese  
Greg Lawyer  
Kendall Reed  
Randy Scott  
Adam Aleksander

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the day and date first written above.

SUNNYSIDE COGENERATION ASSOCIATES, a Utah  
joint Venture

By: SUNNYSIDE HOLDINGS I, INC., a Delaware  
corporation, a joint venture partner

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

*G.B. Lawler*  
*President*

By: SUNNYSIDE II, L.P., a Delaware limited  
partnership, a joint venture partner

By: SUNNYSIDE II, INC., Delaware  
corporation, its general partner

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

*James Neil Willey*  
*JAMES NEIL WILLEY*  
*VICE PRESIDENT*

EAST CARBON CITY

By: \_\_\_\_\_

Name: \_\_\_\_\_

Mayor

ATTEST:

*Jaylene T. Maraker*  
City Recorder

SUNNYSIDE CITY

By: \_\_\_\_\_

Name: \_\_\_\_\_

Mayor

ATTEST:

*Polly A. Sanderson*  
City Recorder

## **AGREEMENT FOR PROPERTY ACCESS**

This Agreement ("Agreement") is entered into this 10th day of July, 2001, by and between Sunnyside Cogeneration Associates ("SCA") and East Carbon City and Sunnyside City. SCA, East Carbon City and Sunnyside City are sometimes referred to collectively as "Parties" and individually as "Party".

WHEREAS, SCA owns Water Right No. 91-231 and uses water from this source in the operation of its waste coal fired electric generating facility located in Sunnyside, Utah;

WHEREAS; SCA desires to further develop Water Right No. 91-231;

WHEREAS, East Carbon City and Sunnyside City are the owners of real property above the source of water from Water Right No. 91-231

WHEREAS, SCA desires to obtain the right of access to property containing an abandoned shaft (the Property) which is owned by East Carbon City and Sunnyside City for exploration of a site for the location of a well for the development of water under the water right of SCA pursuant to the terms and conditions herein;

WHEREAS, East Carbon City and Sunnyside City (the Cities) intend to require SCA to take specific precautions for entry to the site of the proposed development because the site is a closed mined land reclamation site and requires special precautions and to require financial security from SCA for the clean up and restoration of the site of the exploration activities;

NOW THEREFORE, in consideration of the foregoing and respective representations, and agreements and payments contained herein and intending to be legally bound, SCA, East Carbon City and Sunnyside City agree as follows:

### **I. CONTRACT TERMS**

- A. SCA shall pay East Carbon City \$5,000 and Sunnyside City \$5,000, for a total of \$10,000, upon the execution of this Agreement for the right to enter the Property of East Carbon City and Sunnyside City and to investigate development of Water Right No. 91-231 strictly and only under the terms of this Agreement.
- B. SCA and its agents and contractors shall not enter the property without receiving written Notice to Proceed under this Agreement. Prior to receiving a Notice to Proceed and entry on the Property SCA shall submit in writing in triplicate to East Carbon City and in triplicate to Sunnyside City a Project Plan describing and defining with specificity the activities on the Property proposed to be undertaken by SCA or its agents and contractors. The Project Plan for access to the Property shall be submitted to the Cities for the timely approval of counsel for each City

and a designated representative for each City and shall at a minimum, describe the proposed activities with respect to each of the following requirements and issues:

1. Site access, including any road improvement or grading activities proposed if any, the types of equipment used and precautions for controlling erosion from the site.
  2. Security, including provisions to prevent unauthorized entry access to the site to prevent injury to persons and property. Security provisions shall include preventing unauthorized entry to the shaft, and sealing the shaft pending construction of a final well facility or permanent resealing of the cap.
  3. Excavation - including removal and disposition of waste materials from the site.
  4. Cap and slab penetration - including precautions to prevent injury to persons or property.
  5. Monitoring - describing the procedures to investigate any anticipated hazards at the site.
  6. Exploration - how will the site be explored for water.
  7. Development (if applicable, a plan describing the development of the well site and easement would be submitted to the cities for approval)
  8. Re-sealing and reclamation if not developed
  9. Timing - the estimated elapsed time from notice from the Cities to proceed to SCA until the work anticipated by this Agreement is completed.
  10. Area of disturbance, describing the area to be disturbed using a plan with reasonable dimensions suitable for defining the size of the area of disturbance, the location of stockpiled materials if any, parking of vehicles and storage of waste materials prior to hauling from the site for disposal.
- C. SCA shall comply with any and all federal, state and local regulations associated with developing Water Right No. 91-231 including, but not limited to, those relating to the Utah State Engineer and the Utah Division of Oil, Gas and Mining and shall provide the cities written evidence of the approval of all agencies having jurisdiction over the reclamation site with the plan described in Paragraph B. above .
- D. To assure that SCA reclaims the property in accordance with all federal, state and local regulations, SCA shall deposit \$25,000 in an escrow account with East Carbon City for the benefit of East Carbon City and Sunnyside City which amount is estimated to be required to reseal the manshaft and reclaim the site in a manner required by the applicable regulations. If SCA, East Carbon City and Sunnyside City agree on a lease to allow development of the property for a well site and easement or if the property is cleaned up completely and fully reclaimed as

required by the Cities and the applicable regulations, then East Carbon City and Sunnyside City shall return the \$25,000 in the escrow account to SCA.

- E. SCA shall provide East Carbon City and Sunnyside City a complete list of the names of all contractors who will work on the site for SCA in the plan described in Paragraph B. above and evidence of comprehensive general liability insurance for SCA and for all contractors who will work on the project in an amount at least \$1,000,000 together with evidence of applicable workers compensation insurance.
- F. When SCA has provided the information as set forth above, East Carbon City, on behalf of itself and Sunnyside City, shall issue SCA a Notice to Proceed with the plans as submitted.
- G. If SCA determines that a particular parcel of property will work for development of Water Right No. 91-231, SCA, East Carbon City and Sunnyside City shall negotiate in good faith the terms and conditions relating to a lease of a well site and an easement for a water pipeline from the well site to SCA's existing water pipeline in Whitmore Canyon.

## II. GENERAL TERMS

### A. Authority and Enforceability

The Parties hereby represent and warrant that the execution and delivery of this Agreement has been duly authorized by all necessary corporate or city action and will not conflict with, result in any violation of, or constitute a default under, any provision of any agreement or other instrument binding upon or applicable to the Parties or any present law or government regulation or court decree applicable to the Parties. The Parties warrant that this Agreement constitutes a legal, valid and binding obligation of the Parties, enforceable in accordance with its terms.

### B. Governing Law

This Agreement shall be governed by and construed in accordance with the laws of the State of Utah.

### C. Entire Agreement

This Agreement contains the entire agreement between the Parties respecting the subject matter of this Agreement and supersedes all prior understandings and agreements, whether oral or in writing, between the Parties respecting the subject matter of this Agreement, and this Agreement may only be amended in writing signed by the Parties.

D. Severability

If any term, covenant, condition, or provision of this Agreement, or the application thereof to any person or circumstance, shall to any extent be held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the terms, covenants, conditions, or provisions of this Agreement or the application thereof to any person or circumstance, shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.

E. Notice

All written notices under the Agreement shall be directed as follows, and shall be considered delivered when deposited in the U.S. Mail, return receipt requested, provided the notices are actually received, or when hand delivered:

East Carbon City  
% Mayor Dale Andrews  
P.O. Box 70  
East Carbon, UT 84520  
Telephone: 435-888-6613  
Telecopy: 435-888-2146

Sunnyside City  
% Mayor Bruce Andrews  
P.O. Box 69  
701 Market Street  
Sunnyside, UT 84539  
Telephone: 435-888-4444  
Telecopy: 435-888-0409

Sunnyside Cogeneration Associates  
P.O. Box 10  
East Carbon City, Utah 84520  
Attention: Plant Manager  
Telephone: 435-888-4476  
Telecopy: 435-888-2538

With copies to:

Brian W. Burnett, Esq.  
Callister Nebeker & McCullough  
Gateway Tower East, Suite 900  
10 East South Temple  
Salt Lake City, UT 84133  
Telephone: 801-530-7428  
Telecopy: 801-364-9127

Gerald H. Kinghorn, Esq.  
Parsons, Davies, Kinghorn & Peters  
185 South State Street, Suite 700  
Salt Lake City, UT 84111  
Telephone: 801-363-4300  
Telecopy: 801-363-4378

F. Successors and Assigns

It is understood and agreed hereto that all the terms and conditions herein contained shall extend to, inure to the benefit of, and bind the Parties hereto and their respective successors and assigns.

G. Indemnification

SCA, its successors and assigns, shall indemnify, defend and hold harmless East Carbon City and Sunnyside City, its officers, employees, agents, lessees, successors and assigns from any and all liabilities, losses, claims (including without limitation third party claims for personal injury, real or personal property damage), demands, penalties, fines, settlements, damages, lawsuits, response, remedial or inspection costs, government enforcement actions, judgments, interest and losses, including consultant and attorney's fees, together with all other costs and expenses, of whatever kind or nature, known and unknown, contingent or otherwise, whatsoever arising after the date of this Agreement from or in any way related to (a) SCA's activities under this Agreement and development of Water Right No. 91-231, or (b) SCA's violation of any federal, state, or local laws or regulations, unless such liability, loss, claim is caused by the actions of East Carbon City and Sunnyside City.